

conf. A6 *92b 34* 54. The method of claim 17 wherein said contacting occurs during tempering of said food.

25 55. The method of claim *24* *34* 54 further comprising flaking the food wherein said contacting and optional equilibrating occurs prior to said flaking.

92b 36 56. The method of claim 35 wherein said contacting occurs during tempering of said food.

36 *37* 57. The method of claim 56 further comprising flaking the food wherein said contacting and optional equilibrating occurs prior to said flaking.--

REMARKS

Applicants request further examination and reconsideration of the application in view of the amendments and the following remarks. Claims 1-4, 6, 7, 9-12, 14, 15, 17, 18, 20-30, 32, 33, 35, 36, 38-41, 43, 44, 46-49 and new claims 50-57 are pending in this application.

Status of the Claims

Support for the amendments to claims 1, 9, 17 and 35 can be found at page 6 lines 23-26 of the specification. Support for new claims 51-57 can be found at page 2 lines 17-19, page 4, lines 2-11, page 9, lines 19-21 and page 10, lines 7-11, for example. Claims 5, 8, 13, 16, 19, 31, 34, 37, 42 and 45 have been cancelled.

1. Double Patenting

Claims 1-16 were provisionally rejected for obviousness-type double patenting over claims 77-93 and 98-121 of Application Nos. 09/739,857 and 09/487,036. Applicants believe the Examiner intended to base the double patenting rejection on Application No. 09/738,450 (Attorney Docket No. 40002-10387) as the present application is Application No. 09/739,857 (Attorney Docket No. 40002-10083). Claims 77-93 and 98-121 of the '450 application are presently pending. At this time, it is not known which application—the present application or the '450

application—will be the first to issue as a patent. Applicants intend to file a terminal disclaimer for the later issuing claims.

Regarding Application No. 09/487,036 (Attorney Docket No. 40002-10075), claims 77-93 were withdrawn as a result of a restriction requirement; claims 94-99 have been cancelled; pending claims 100-107 are dependent upon claim 40 which recites a method for forming coated, uncooked oat flake agglomerates, and claims 108-113 recite additional methods for coating oat flakes. In addition, each method claim 100—113 includes a drying step—an element wholly lacking in product claims 1-16 of the present application. Applicants respectfully submit that claims 100-113 of the '036 application are patently distinct from pending claims 1-16 and that the double patenting rejection over the Application No. 09/487,036 be withdrawn.

2. § 112 Rejection

Claim 25 was rejected under 35 U.S.C. § 112 2nd paragraph as being indefinite. The Examiner contends that one could not compare the infusion mixture concentration to the weight of the oat groats. Claim 25 has been amended to recite the amount of aqueous infusion mixture that is applied to the uncooked oat groats.

3. § 103 Rejections

Claims 1-49 were rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 5,997,917 to Uchida et al. (Uchida), or U.S. Patent No. 6,284,299 to Morello et al. (Morello) or U.S. Patent No. 2,829,054 to Feinstone (Feinstone). These rejections are traversed for the following reasons and for other reasons that will be apparent.

a. *The present claims are patentable over Uchida*

Uchida discloses application of a protein film-forming material onto pressed or unpressed oats. Rather, the protein coating the oat surface is degenerated. Uchida, col. 4 lines 20-21. Consequently, the purpose of the protein is to prevent elution of oat components when the oat is subsequently placed into hot or boiling water. Uchida, col. 4 lines 17-23. The protein provides no nutritional value and is not a vitamin, mineral, nutrient as claimed, or a spice or flavor. Uchida thus teaches away from the present claims. A skilled artisan reading the Uchida

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reference would be taught to prevent the diffusion of beneficial dietary components from oats as opposed to applying additional ingredients either into or on the oats. Thus, Uchida has no pertinence at all to absorption of materials into the oat or corn grit. (Claims 1, 17 and claims dependent therefrom). Nor does Uchida teach or suggest absorbing the claimed materials onto the surface of an oat groat or corn grit. Uchida is merely concerned with forming a film coating to prevent elution of native materials from the oat flake, thereby teaching away from the claimed invention. In addition, Uchida, like the other references, contains no suggestion of the claimed method in which the claimed materials are absorbed on or absorbed into the uncooked oat groat or corn grit, and in which such absorption occurs during tempering.

b. The present claims are patentable over Morello

Morello discloses soaking the oat groat by immersing the groats in water. Morello, col. 6 lines 13-16. This soaking process increases the moisture content of the groat by over 200% to improve processing characteristics. *Id.* at Examples 2, 3, and 5-8. Alternatively, Morello teaches impregnating the groats with sugars during the soaking step. *Id.* at col. 9 lines 59-65. This soaking is necessary as an object of Morello is to solubilize simple sugars in order to improve processing by obtaining the desired amount of Maillard reaction products. *Id.* at col. 6 lines 1-10. Morello is not at all concerned with absorbing or absorbing any of the materials as recited by the present claims, namely vitamins, minerals, nutrients, spices, and flavors and which materials can be applied during otherwise normal tempering of the oat groats or corn grit and prior to flaking (claims 54-57).

c. The present claims are patentable over Feinstone

Feinstone does not teach or suggest an oat or corn grit product with added material which increases the moisture content of the food product by 1-35%. Feinstone has no teaching or suggestion whatsoever that vitamins, nutrients, spices or flavors are absorbed into a food product as recited in independent claims 1 and 17. Feinstone teaches and requires treating rice with a water-insoluble binding or film-forming carboxymethylcellulose (CMC) material that forms a coating on the surface. Feinstone, col. 3 lines 63-65. One of ordinary skill in the art would realize

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that CMC is a film-forming agent and is not a nutrient or flavoring. Moreover, Feinstone teaches away from material absorbed into a product as the CMC coating adheres tenaciously to the rice. Feinstone, col. 3 lines 60-65.

Furthermore, Feinstone does not teach or suggest that nutrients and/or flavors are absorbed into the food as recited in claim 17 or adsorbed to the surface of the oat groats as recited in claims 9 and 35. Nor does the treated Feinstone food product consist essentially of the food product and the vitamin, mineral, nutrient, flavor or spice. Feinstone requires use of a CMC dispersion forms a water-insoluble film that adheres to the rice.

CONCLUSION

In conclusion, it is respectfully submitted that pending claims 1-4, 6, 7, 9-12, 14, 15, 17, 18, 20-30, 32, 33, 35, 36, 38-41, 43, 44, 46-49 and new claims 50-57 are nonobvious and patentable. An early indication of allowance is solicited.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached pages are captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**"

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

The claims have been amended as follows.

Claims 5, 8, 13, 16, 19, 31, 34, 37, 42 and 45 are cancelled without prejudice.

The following claims have been amended.

1. (Amended) An uncooked food product [comprising] consisting essentially of a food selected from the group consisting of uncooked oat groats, uncooked corn grit and mixtures thereof, [said food having] and added material absorbed into the food, said material selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, [and] flavors and combinations thereof present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the food product.

9. (Amended) An uncooked oat product [comprising] consisting essentially of uncooked oat groats [having materials] and at least one added material adsorbed onto at least a portion of the surface of the groats[, said materials comprising at least one component] selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, [and] flavors and combinations thereof and present at a concentration of from about 0.0001% to about 2% on a dry weight basis of the uncooked oat product.

17. (Amended) A method of incorporating at least one water soluble or water dispersible ingredient into the body of food selected from the group consisting of uncooked oat groats and uncooked corn grit, comprising:

- (a) contacting the food with an aqueous infusion mixture of water and the ingredient selected from the group consisting of uncooked oat groats, uncooked corn grit and mixtures thereof, and added material absorbed

into the food, said material selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, flavors and combinations thereof present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the food product for a time and in an amount and ingredient concentration effective to increase the moisture content of the food by from about 1% [8%] to about 35% [10%] by weight of the food to absorb the ingredient;

- (b) optionally equilibrating the contacted food with the aqueous infusion mixture for a sufficient amount of time to cause further absorption of the ingredient by the food.

25. (Amended) The method of claim 17 wherein said food is uncooked oat groats and said aqueous infusion mixture is applied to the surface of the uncooked oat groats in an amount [at a concentration] of from about 2% to about 29% by total weight of the oat groats.

35. (Amended) A method of adding at least one non-water soluble [selected] ingredient to uncooked oat groats so such ingredient becomes adsorbed onto at least a portion of the surface of the uncooked oat groats, the method comprising:

- (a) prior to flaking the oat groats contacting the surface of the uncooked oat groats with an aqueous mixture containing the non-water soluble [selected] ingredient selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, flavors and combinations thereof present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the oat groats for a time and in an amount and ingredient concentration effective to increase the moisture content of the uncooked oat groats by from about 1% [8%] to about 35% [10%] and to cause adsorption of the ingredient; and thereafter

- (b) optionally equilibrating the [coated] uncooked oat groats with the aqueous mixture for a sufficient amount of time to cause further adsorption of the ingredient onto at least a portion of the surface of the oat groats.

The following new claims have been added.

--50. The product of claim 1 wherein said product has a moisture content of about 8% to about 10%.

51. The product of claim 1 wherein said added material is substantially fat-free.

52. The product of claim 9 wherein said materials are present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the food.

53. The product of claim 9 wherein said materials are substantially fat-free.

54. The method of claim 17 wherein said contacting occurs during tempering of said food.

55. The method of claim 54 further comprising flaking the food wherein said contacting and optional equilibrating occurs prior to said flaking.

56. The method of claim 35 wherein said contacting occurs during tempering of said food.

57. The method of claim 56 further comprising flaking the food wherein said contacting and optional equilibrating occurs prior to said flaking.--